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Supreme Court of the United States

Supreme Court, U.S.
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October Term, 1971

No. .....

71-641

CONCHITA ESCOBAR,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

Petition for Writ of Certiorari to the Superior Court of the State of California for the County of Orange.

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SUBJECT INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutory Provisions Involved	2
Statement of the Case	2
Reasons Relied on for Allowance of Writ	7
I.	
The Red Light Abatement Act Is an Unconstitutional Prior Restraint Upon the Exercise of Free Speech as Applied Herein	7
II.	
The Order Imposed Against Petitioner Purports to Prohibit the Presentation of Entertainment Protected by the First Amendment and It Is Therefore Overly Broad on Its Face	11
III.	
Conclusion	14

INDEX TO APPENDICES

Appendix A. Pertinent Penal Code Sections Involved ..... App. p. 1

Appendix B. A Stipulation for Entry of Decree of Permanent Injunction; Order Thereon ..... App. p. 6

Appendix C. Declaration of Contempt for Violation of Permanent Injunction ..... App. p. 9

Appendix D. Clerk's Office Supreme Court, Sept. 22, 1971. Hearing Denied ..... App. p. 18

TABLE OF AUTHORITIES CITED

Cases	Page
Bantam Books, Inc. v. Sullivan, 372 U.S. 58	12
Berry, In re, 68 Cal. 2d 137, 65 Cal. Rptr. 273	12
Board of Supervisors v. Simpson, 36 Cal.2d 671, 227 P.2d 14	8
Central Magazine Sales Limited v. United States, 389 U.S. 50. (1967)	14
Dombrowski v. Pfister, 380 U.S. 486	11, 12
Giannini, In re, 69 Cal.2d 563	9; 13
NAACP v. Button, 371 U.S. 415	12
Near v. Minnesota, 283 U.S. 697	9, 10
Perrine v. Municipal Court, ... Cal.3d .... 97 Cal. Rptr. 320	10
Thornhill v. Alabama, 310 U.S. 88	12
United States v. Central Magazine Sales Limited, 381 F.2d 821	14
United States v. One Carton Positive Motion Picture Film, 367 F.2d 889	14
United States v. Thirty-five Millimeter Motion Picture Film, 432 F.2d 705, Cert. granted 91 Sup. Ct. 881	14
Zwickler v. Koota, 389 U.S. 241	11
Statutes	
California Code of Civil Procedure, Sec. 1222	1
California Penal Code, Sec. 311.6	10
California Penal Code, Sec. 11225	7
California Penal Code, Secs. 11225-11235	2, 7
California Penal Code, Sec. 11230	3, 7, 8, 9
United States Code, Title 28, Sec. 1257(3)	2
United States Constitution, First Amendment	2, 8, 9, 11, 13, 14
United States Constitution, Fourteenth Amendment	9

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THE STATE OF CALIFORNIA,

Respondent.

Petition for Writ of Certiorari to the Superior Court of the State of California for the County of Orange.

Petitioner, Conchita Escobar, respectfully prays that a Writ of Certiorari be issued to review the final judgment of the Superior Court of the State of California for the County of Orange entered in the above matter on June 15, 1971.

Opinions Below.

There were no written opinions below.

Jurisdiction.

On June 15, 1971, in the Superior Court of the State of California for the County of Orange, petitioner was found to be guilty of a contempt of court for having violated the terms of a permanent injunction. An order holding a person in contempt of court is not appealable. California Code of Civil Procedure §1222. On September 29, 1971, the time for filing this peti-

tion was extended to and including November 12, 1971. The jurisdiction of this court is invoked under 28 U.S.C. §1257(3).

Questions Presented.

1. Are Sections 11225 through 11235 of the California Penal Code, commonly known as the Red Light Abatement Act, constitutionally vague and overbroad and do they constitute a prior restraint on the exercise of free speech in violation of the First Amendment insofar as said sections purport to authorize the closing for one year of a place of entertainment.

2. Is the permanent injunction which petitioner was found to have violated unconstitutionally vague and broad in violation of the First Amendment and is said permanent injunction an unlawful prior restraint upon the exercise of free speech in violation of the First Amendment in that it purports to prevent petitioner from presenting non-obscene entertainment.

Statutory Provisions Involved.

Sections 11225 through 11235 of the California Penal Code, commonly known as the Red Light Abatement Act, are set forth in their entirety in Appendix "A".

Statement of the Case.

Petitioner, Conchita Escobar is, and since June 21, 1968 has been, the owner and operator of a bar and place of entertainment known as the "Vampire Room", located in Santa Ana, California.

On or about May 2, 1969, a complaint was filed in the Superior Court of the State of California, in and for the County of Orange, entitled *People of the State of California, Ex Rel. Cecil Hicks, District Attorney*

of Orange County v. The Vampire Room, Conchita Escobar, et al. Said complaint was filed pursuant to and under the authority of the Red Light Abatement Act and alleged that the Vampire Room was being used for the maintenance of a nuisance contrary to Section 11230 of the Penal Code and that the premises had the general reputation of being a place which was kept, conducted and maintained for the purpose of lewdness and assignation. As part of the relief prayed for in said complaint, the court was requested to issue an order directing the Sheriff of Orange County to remove from the Vampire Room all furniture, fixtures, musical instruments or movable property of whatever kind or nature used in conducting or maintaining the nuisance and directing the Sheriff to sell the same in the manner provided for the sale of chattels under execution. Said complaint further prayed for an order directing the Sheriff to close the building to any use or purpose for one year.

On or about May 14, 1969, the Superior Court issued a preliminary injunction against petitioner. On or about May 29, 1969, petitioner filed her answer to the complaint.

On or about June 27, 1969, petitioner entered into a stipulation with the District Attorney whereby the temporary injunction would become permanent. In turn, the District Attorney would not seek to close the premises (and thereby cause petitioner's personal property in the bar to be sold). The order (constituting the permanent injunction) filed pursuant to said stipulation reads:

"IT IS HEREBY ORDERED that Conchita Escobar, as well as all other managers and op-

erators of the defendant establishment, are permanently enjoined and restrained from conducting or permitted (sic) to be conducted herein as part of the business operations the so-called bottomless performances, which, more specifically, means any and all sexually provocative dances and exhibitions where the performer's genitalia, anus and pubic hair region whether real or simulated, are not completely covered by material which cannot be seen through by the nearest spectator.

"IT IS FURTHER ORDERED that all managers and operators of the above establishment are enjoined and restrained from conducting or permitting to be conducted therein, any activity wherein persons are allowed or permitted to make physical contact with the performer's pubic area or breasts in real or simulated sexual activity." (Appendix B).

On or about December 18, 1970, a declaration of contempt for violation of permanent injunction was filed against petitioner by the District Attorney of the County of Orange (Appendix C). Said declaration specified, in pertinent part:

"On December 7, 1970 and December 8, 1970, adult females performed and exhibited themselves on a raised platform at the VAMPIRE ROOM and during each of said performances and exhibitions they displayed their genitalia, and pubic hair region, and on the December 8, 1970, occurence the anal region was also clearly displayed, and on both occasions the above described areas were fully visible and viewed by the patrons

seated in the establishment, all as more fully visible and viewed by the persons seated in the establishment, . . ."

On or about December 18, 1970, an order to show cause was filed ordering petitioner to appear and show why she should not be punished for contempt. A contempt hearing was held in the Superior Court of the State of California for the County of Orange on May 10, 11 and June 15, 1971. Testimony was taken and petitioner was represented by counsel. Petitioner was found in contempt on one count (events of December 7, 1970) and not guilty of contempt as to the December 8, 1970 incident. Petitioner was sentenced to be confined for ten days in the Orange County Jail. Said imprisonment was stayed so that petitioner might seek judicial review. Petitioner is due to report to the Orange County Jail on January 5, 1972, to serve said sentence.

On or about August 5, 1971, petitioner filed a petition for writ of habeas corpus or certiorari in the Court of Appeal of the Fourth Appellate District, State of California. On or about August 17, 1971, said petition was denied without opinion. A true and correct copy of said denial is attached hereto as Appendix D.

On or about August 23, 1971, petitioner filed a petition for writ of habeas corpus or hearing in the Supreme Court of the State of California. On or about September 22, 1971, said petition was denied without opinion. A copy of the order denying said hearing is attached hereto as Appendix E.

The contempt hearing evidence established that the Vampire Room is a bar where female entertainers danced while bare breasted upon a runway and stage. The dancers did not perform in the nude in compliance with the Red Light Abatement Act order dated June 27, 1969 (Appendix B). On December 7, 1970, two police officers from the City of Santa Ana entered the Vampire Room. As they entered they observed Monette McCall dancing on the runway stage which extended from the bar counter. Miss McCall was lying on the runway and, although she was wearing a G-string it was displaced so that her "pubic area" was visible. The police officer took a seat near the runway and observed McCall knead her breasts with her hands. Then McCall laid back and spread her legs. She reached with her hands and pulled her vulva open. Music was playing and MeCall was moving her body, but it did not appear that such motions were in time with the music. McCall moved down the runway and appeared to repeat like acts before various customers.

After standing up and dancing to one record, McCall was observed to bend over and, spread her buttocks and push the strap of the G-string into her "anal aperture". McCall was placed under arrest at the conclusion of the performance.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

I.

The Red Light Abatement Act Is an Unconstitutional Prior Restraint Upon the Exercise of Free Speech as Applied Herein.

The proceedings against petitioner herein are based upon the California Red Light Abatement Act which is set forth in Sections 11225 through 11235 of the California Penal Code. Section 11225 provides as follows:

> "Every building or place used for the purpose of . . . lewdness, assignation or prostitution, and every building or place in or upon which . . . lewdness, assignation, or prostitution are held or occur, is a nuisance which shall be enjoined, evaded and prevented, whether it is a public or private nuisance.

The manner in which the abatement is to be carried out is specified in Section 11230 of the Penal Code as follows:

> "If the existence of a nuisance is established in an action as provided in this article, an order of abatement shall be entered as a part of the judgment in the case, directing the removal from the building or place of all fixtures, musical instruments and moveable property used in conducting, maintaining, aiding or abetting the nuisance, and directing the sale thereof in the manner provided for the sale of chattels under execution, and the

effectual closing of the building or place against its use for any purpose, and that it be kept closed for a period of one year, unless sooner released. While such order remains in effect as to closing such building or place it is and shall remain in the custody of the court . . ."

The Red Light Abatement Act was originally enacted in 1913 and was made a part of the Penal Code in 1953. It was originally intended to be used for the control of houses of prostitution. *Board of Supervisors v. Simpson*, 36 Cal.2d 671, 227 P.2d 14 (1951). In recent years the Act has been used against places where nude dancing is presented on the theory that such daneing constitutes acts of lewdness. As of this date, petitioner is aware of no appellate decisions in the State of California either approving or disapproving the use of the Red Light Abatement Act against such conduct. Similarly, there are no reported opinions in the State of California discussing the legality of applying the Act to stop nude dancing (and close the forum of such performances) which is entertainment *prima facie* protected by the First Amendment.

In the instant case, the order closing the premises and selling the chattels (Section 11230 of the Penal Code) was prayed for in the complaint. The District Attorney did agree to waive the requested closure as part of the compromise by which the temporary injunction became permanent. Said Section 11230 authority to close the premises, *et cetera* is a viable issue here, since petitioner stipulated to the permanent injunction in order to avoid the risk that her business would be closed for one year and her personal property sold.

An order such as that provided for by Section 11230 of the Penal Code and of the type entered against petitioner amounts to unconstitutional prior restraints where, as here, the alleged acts of lewdness involve the performances of dances by entertainers before a consenting adult audience in places of public amusement. Such dancing is entitled to *prima facie* protection to the First Amendment and may not be prohibited by law unless it is obscene. *In re Giannini*, 69 Cal.2d 563 (1968) Cert. Denied. The order authorized by Section 11230 of the Penal Code would permit a forced closure of petitioner's place of business if such entertainment were presented, notwithstanding that the dominant theme or even majority of the actions are not lewd or obscene. A Section 11230 order may sweepingly and arbitrarily prevent petitioner (or indeed anyone) from presenting even the most innocent entertainment at the Vampire Room for as long as the year.

Even a narrow and specific injunction against obscene or lewd entertainment would be an unconstitutional prior restraint, for it is well established that the exercise of free speech may not be enjoined or abated as a public nuisance, notwithstanding that such speech might, after the fact, be found to be outside the protection of the First Amendment. The leading case is *Near v. Minnesota*, 283 U.S. 697 which involved a statute providing for the abatement of "malicious, scandalous and defamatory" newspapers, magazines, or other periodicals as a "public nuisance". This court held in *Near* that the statute was unconstitutional as an infringement of the liberty of press guaranteed by the First and Fourteenth Amendments and set aside an order enjoying the publication of a magazine

which had been found to contain libelous statements. Thus, even though the persons publishing the libel could have been held responsible therefor after publication, the *Near* court held that such publication could not be enjoined in advance. The recent decision of this court permitting the publication of the Pentagon Papers affirms the viability of *Near*.

In a decision entered only three weeks prior to the denial of a writ to petitioner herein, the California Supreme Court recognized the viability of the doctrine of prior restraint as applied to the area of obscenity. In *Perrine v. Municipal Court*, ... Cal.3d .... 97 Cal. Rptr. 320 (September 3, 1971), the court held unconstitutional a Los Angeles County ordinance providing for the licensing of bookstores. In reaching its decision the court said a license to operate a bookstore could not be denied upon the grounds that the applicant had been convicted of selling obscene books. The court held in *Perrine* that it could not assume that a person once convicted of an obscenity offense would commit another or that, if he did, criminal sanctions would not afford adequate remedy, citing *Near v. Minnesota*. *Perrine v. Municipal Court, supra*, 97 Cal. Rptr. at page 325. Unfortunately, the California Supreme Court did not see fit to apply its *Perrine* reasoning to the instant case. It appears clear that the Red Light Abatement Act as applied herein is nothing more than another example of the unconstitutional inference that a person who has permitted obscene entertainment will do so again and that criminal sanctions (*e.g.*, California Penal Code §311.6) are not an adequate remedy.

II.

The Order Imposed Against Petitioner Purports to Prohibit the Presentation of Entertainment Protected by the First Amendment and It Is Therefore Overly Broad on Its Face.

The doctrine of constitutional overbreath was succinctly stated by this court in *Zwickler v. Koota,* 389 U.S. 241 (1967), which held unconstitutional a New York statute prohibiting distribution of anonymous political handbills of pamphlets. The court there observed that a statute would be unconstitutionally overbroad if, no matter how clear or precise its terminology, it swept unnecessarily broadly and purported to invade the areas of protected freedoms. The existence of an overly broad statute or order is of itself an inhibition of the exercise of First Amendment rights, even though potential enforcement of such order against free speech could be successfully defended on constitutional grounds. As was said in *Dombrowski v. Pfister:*

> "A criminal prosecution under a statute regulating expression usually involves imponderables and contingencies that themselves may inhibit the full exercise of First Amendment freedoms. See e.g., *Smith v. California,* 361 U.S. 147. When the statutes also have an over broad sweep, as is here alleged, the hazard of loss or substantial impairment of those precious rights may be critical, for in such cases the statutes lend themselves too readily to denial of those rights. The assumption that defense of a criminal prosecution will generally assure ample vindication of constitutional rights is unfounded in such cases. See *Baggett v. Bullitt,* supra, 377 U.S. at 379. For 'the

threat of sanctions may deter . . . almost as potently as the actual application of sanctions . . .'" *Dombrowski v. Pfister, supra,* 380 U.S. at page 486.

The rule of unconstitutional overbreath is not limited to penal statutes and it has been held to apply to injunctive orders. *Bantam Books, Inc. v. Sullivan,* 372 U.S. 58 (1962), *Thornhill v. Alabama,* 310 U.S. 88 (1940). See also *In re Berry,* 68 Cal. 2d 137, 65 Cal. Rtpr. 273 (1968).

The general rule is that government regulations which touch upon the exercise of free speech must be stated with narrow specificity calculated to prevent repression of expressive activities which are protected by the Constitution. *NAACP v. Button,* 371 U.S. 415 (1963).

The order in this case is directly concerned with regulating the content of dancing at the Vampire Room. Said order provided as follows:

> "IT IS HEREBY ORDERED that CONCHITA ESCOBAR as well as all other managers and operators of the defendant establishment, are permanently enjoyed and restrained from conducting or permitted (sic) to be conducted therein as a part of the business operations the so-called bottomless performances, which, more specifically, means any and all sexually provocative dances and exhibitions where the performer's genitalia, anus and pubic hair region whether real or simulated, are not completely covered by material which cannot be seen through by the nearest spectator.

"IT IS FURTHER ORDERED that all managers and operators of the above establishment are enjoyed and restrained from conducting or permitting to be conducted therein, any activity wherein persons are allowed or permitted to make physical contact with performers pubic area or breasts in real or simulated sexual activity."

It is unquestioned from the record herein that the finding of contempt against petitioner was based entirely upon the first paragraph of the injunction to wit, a bottomless performance in which the performer's genitalia, anus or pubic hair were not completely covered by an opaque material. Although the performer, Monnette McCall, did make physical contact with her own breasts and pubic area, the injunctive order only prevents such contact when it is between the performer and other persons.

It is now generally accepted that the performance of dancing and other entertainment is protected by the First Amendment even though it may take place in a bar. *In re Giannini,* 69 Cal.2d 563 (1968). Therefore, such entertainment and dancing is not illegal as a result of its sexual content unless it is obscene. However, the order imposed upon petitioner is neither expressly nor impliedly confined to preventing obscene entertainment. It simply prevents the exposure of a performer's genitalia or anus during the course of a performance, whether or not such performance is obscene. A long line of cases has held that in the context of expression protected by the First Amendment neither nudity nor the prominent display of the sexual organ nor the depiction of sexual act is sufficient in and of itself to render such expression obscene unless all the elements of the constitutional tests of obscenity have been met.

Central Magazine Sales Limited v. United States, 389 U.S. 50 (1967) (reversing a finding of obscenity with respect to magazines containing photographs of young women in long stockings and garter belts which framed the pubic area and focused attention on it;) *United States v. Central Magazine Sales Limited*, 381 F.2d 821 (4th Cir. 1967); *United States v. Thirty-five Millimeter Motion Picture Film*, 432 F.2d 705 (2nd Cir. 1970), Cert. granted 91 Sup. Ct. 881; *United States v. One Carton Positive Motion Picture Film*, 367 F.2d 889 (2nd Cir. 1966).

Therefore, the injunctive order is unconstitutionally overbroad in that it expressly prohibits peitioner from presenting entertainment by nude performers even when such entertainment is not obscene. Since the order is not limited to the obscene it is a prior restraint upon the presentation of entertainment protected by the First Amendment.

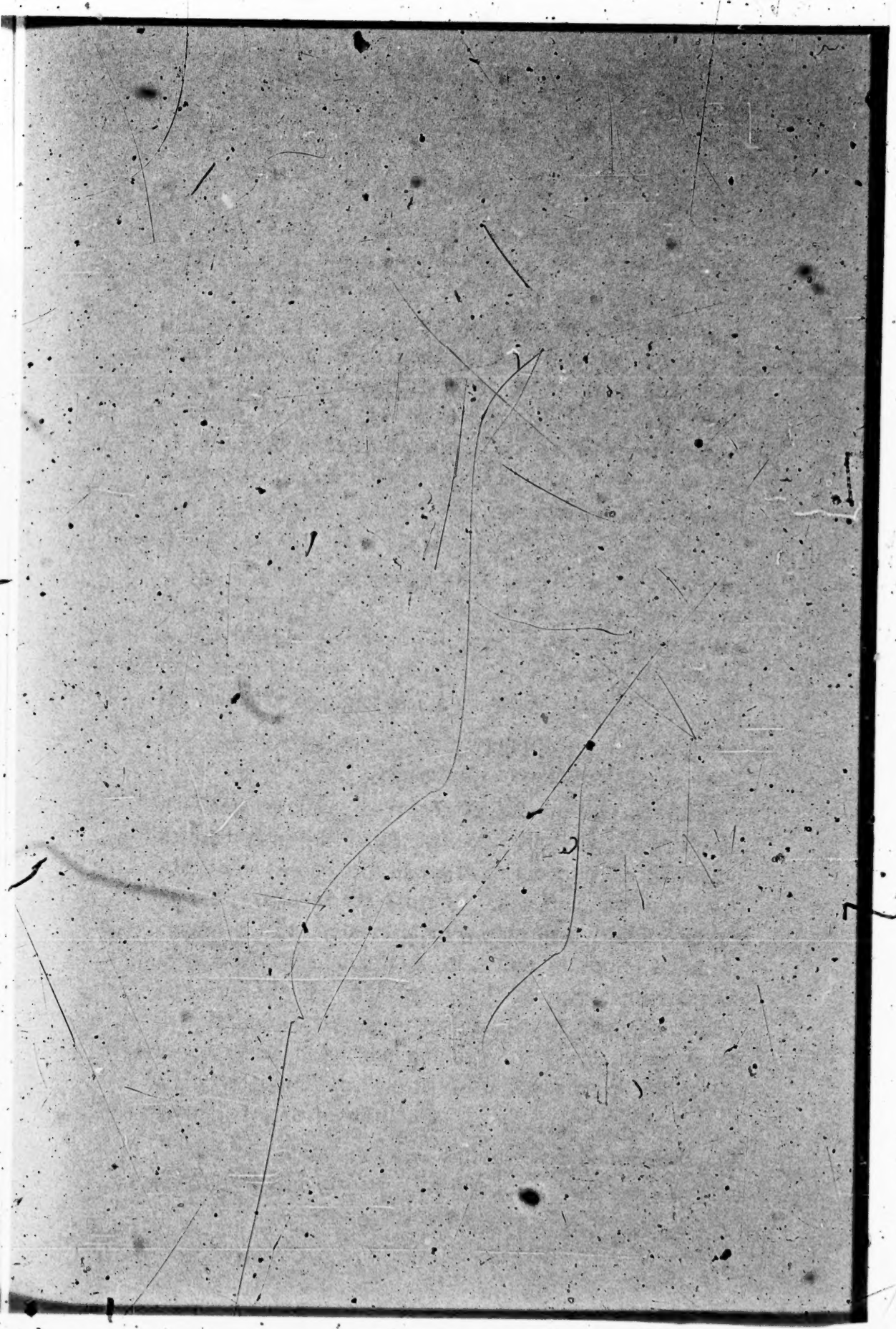
III.

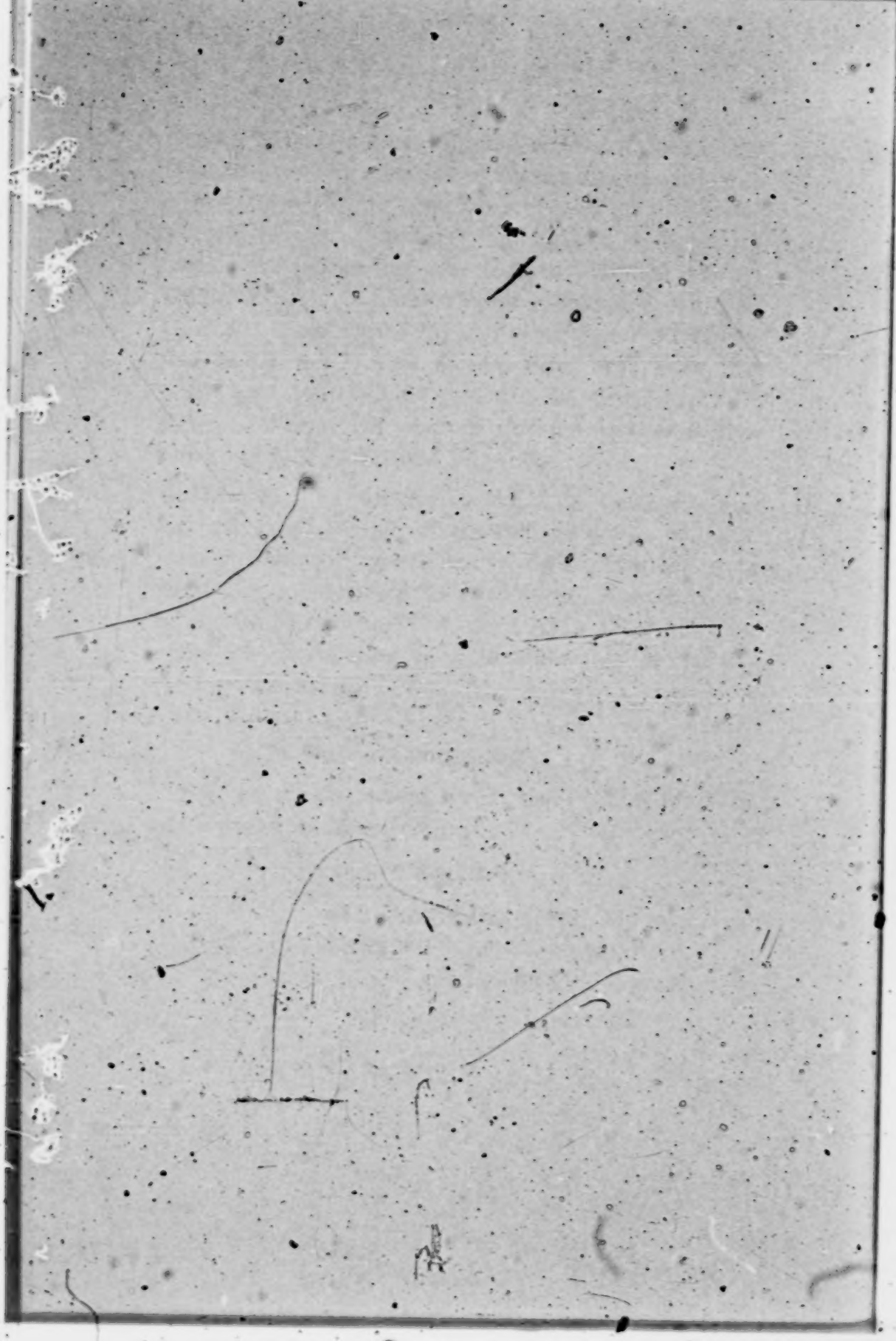
Conclusion.

For the reasons stated herein the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

McPherson Berrien E. Moore,
Kenneth Scholtz,
Attorneys for Petitioner.





APPENDIX A.

§11225. *Place of illegal gambling, prostitution, etc., nuisance; injunction, abatement and prevention*

Every building or place used for the purpose of illegal gambling as defined by state law or local ordinance, lewdness, assignation, or prostitution, and every building or place in or upon which acts of illegal gambling as defined by state law or local ordinance, lewdness, assignation, or prostitution, are held or occur, is a nuisance which shall be enjoined, abated and prevented, whether it is a public or private nuisance.

Nothing in this section shall be construed to apply the definition of a nuisance to a private residence where illegal gambling is conducted on an intermittent basis and without the purpose of producing profit for the owner or occupier of the premises.

§11226. *Abatement action; plaintiff; relief demanded; verification of complaint*

Whenever there is reason to believe that a nuisance as defined in this article is kept, maintained or is in existence in any county, the district attorney, in the name of the people of the State of California, must, or any citizen of the State resident within said county, in his own name may, maintain an action in equity to abate and prevent the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee or agent of the building, or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it.

The complaint in such action must be verified unless filed by the district attorney.

§11227. *Temporary injunction*

Whenever the existence of a nuisance is shown in an action brought under this article to the satisfaction of the court or judge thereof, either by verified complaint or affidavit, the court or judge shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of such nuisance.

§11228. *Priority of actions; failure to prosecute; substitution of plaintiff; costs*

Actions brought under this article have precedence over all actions, excepting criminal proceedings, election contests and hearings on injunctions, and in such actions evidence of the general reputation of a place is admissible for the purpose of proving the existence of a nuisance. If the complaint is filed by a citizen, it shall not be dismissed by the plaintiff or for want of prosecution except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal ordered by the court. In case of failure to prosecute any such action with reasonable diligence, or at the request of the plaintiff, the court, in its discretion, may substitute any other citizen consenting thereto for the plaintiff. If the action is brought by a citizen and the court finds there was no reasonable ground or cause therefor, the costs shall be taxed against such citizen.

§11229. *Disobedience of injunction; contempt; punishment*

Any violation or disobedience of an injunction or order expressly provided for by this article is punishable as a contempt of court by a fine of not less than two hundred dollars ($200) nor more than one thousand

dollars ($1,000), by imprisonment in the county jail for not less than one nor more than six months, or by both.

§11230. *Order of abatement; removal and sale of personal property; building in custody of court*

If the existence of a nuisance is established in an action as provided in this article, an order of abatement shall be entered as a part of the judgment in the case, directing the removal from the building or place of all fixtures, musical instruments and movable property used in conducting, maintaining, aiding or abetting the nuisance, and directing the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and that it be kept closed for a period of one year, unless sooner released. While such order remains in effect as to closing, such building or place is and shall remain in the custody of the court. For removing and selling the movable property, the officer is entitled to charge and receive the same fees as he would for levying upon and selling like property on execution. For closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

§11231. *Proceeds of sale of property.*

The proceeds of the sale of the property, as provided in Section 11230, shall be applied as follows:

1. To the fees and costs of removal and sale;

2. To the allowances and costs of closing and keeping closed the building or place;

3. To the payment of plaintiff's costs in the action;

4. The balance, if any, shall be paid to the owner of the property so sold.

If the proceeds of the sale do not fully discharge all such costs, fees and allowances, the building and place shall also be sold under execution issued upon the order of the court or judge and the proceeds of such sale applied in like manner.

§11232. *Release of building; conditions*

If the owner of the building or place is not guilty of any contempt of court in the proceedings, and appears and pays all costs, fees and allowances which are a lien on the building or place and files a bond in the full value of the property, to be ascertained by the court, with sureties, to be approved by the court or judge, conditioned that he will immediately abate any nuisance that may exist at such building or place and prevent the same from being established or kept thereat within a period of one year thereafter, the court, or judge thereof, may, if satisfied of his good faith, order the premises closed under the order of abatement, to be delivered to said owner, and the order of abatement canceled so far as the same may relate to said property. The release of the property under the provisions of this section does not release it from any judgment, lien, penalty or liability to which it may be subject by law.

§11233. *Contempt; fine a lien on building*

Whenever the owner of a building or place upon which an act or acts constituting a contempt as defined in this article has been committed, is guilty of a contempt of court and fined therefor under this article, the fine shall be a lien upon the building and place

to the extent of the interest of such person therein, enforceable and collectible by execution issued by the order of the court.

§11234. *Person*

"Person" as used in this article means individuals, corporations, associations, partnerships, trustees, lessees, agents and assignees.

§11235. *Building*

"Building" as used in this article means so much of any building or structure of any kind as is or may be entered through the same outside entrance.

APPENDIX B.

A Stipulation for Entry of Decree of Permanent Injunction; Order Thereon.

Superior Court of the State of California for the County of Orange.

The People of the State of California, Plaintiff, vs. Vampire Room, Conchita Escobar, et al., Defendants. No. 166 675.

Filed: June 30, 1969.

IT IS HEREBY STIPULATED AND AGREED by and between the people of the State of California, plaintiff, in the above entitled action, and by CONCHITA ESCOBAR, dba THE VAMPIRE ROOM, defendant in the above entitled action, by and through their respective attorneys, that the people of the State of California shall be awarded a permanent injunction to abate the nuisance described in the complaint on file herein.

IT IS FURTHER STIPULATED AND AGREED between the above named parties that an Order may be entered against CONCHITA ESCOBAR, as well as all other managers and operators of the defendant establishment, enjoining and restraining them from conducting or permitted to be conducted within said establishment as a part of the business operations so-called bottomless performances, which, more specifically, means any and all sexually provocative dances and exhibitions where the performer's genitalia and anus and pubic hair region, whether real or simulated, are not completely covered by a material which cannot be seen through by the nearest spectator.

IT IS FURTHER STIPULATED AND AGREED that all managers and operators of the above establishment are enjoyed and restrained from conducting or permitting to be conducted therein, any activity wherein persons are allowed or permitted to make physical contact with the performer's pubic area or breasts in real or simulated sexual activity.

IT IS FURTHER STIPULATED AND AGREED that except as hereinabove stipulated all other relief prayed for by the complaint is hereby dismissed by the plaintiff.

DATED: June 27, 1969

/s/ Michael R. Cappizi, Deputy
CECIL HICKS, District Attorney of the County of Orange, State of California.
Attorney for Plaintiff

APPROVED:

/s/ Conchita Escobar
CONCHITA ESCOBAR

/s/ Kent G. Snyder
KENT G. SNYDER, Attorney for Defendant, Conchita Escobar, dba The Vampire Room

ORDER

GOOD CAUSE APPEARING THEREFORE:

IT IS HEREBY ORDERED that CONCHITA ESCOBAR, as well as all other managers and operators of the defendant establishment, are permanently enjoined and restrained from conducting or permitted to be conducted therein as a part of the business operations the so-called bottomless performances, which.

more specifically, means any and all sexually provocative dances and exhibitions where the performer's genitalia, anus and pubic hair region, whether real or simulated, are not completely covered by material which cannot be seen through by the nearest spectator.

IT IS FURTHER ORDERED that all managers and operators of the above establishment are enjoyed and restrained from conducting or permitting to be conducted therein, any activity wherein persons are allowed or permitted to make physical contact with the performer's pubic area or breasts in real or simulated sexual activity.

DATED: June 27, 1969

/s/ Claude M. Owens
JUDGE OF THE SUPERIOR COURT

APPENDIX C.

Declaration of Contempt for Violation of Permanent Injunction.

In the Superior Court of the State of California in and for the County of Orange.

The People of the State of California, Plaintiff, vs. Vampire Room, Conchita Escobar, et al., Defendants. No. 166675.

The People of the State of California, Plaintiff in the above entitled action, state:

The above entitled action was brought by the People of the State of California against the above-named defendants under Penal Code Sections 11225-11230, otherwise known as the Red Light Abatement Act. The Case was resolved by a Stipulation between both parties for entry of a decree of permanent injunction. CONCHITA ESCOBAR was a defendant in the above entitled action and was a party to the stipulated permanent injunction. CONCHITA ESCOBAR was and is presently the sole and exclusive licensee for the VAMPIRE ROOM. The Affidavit of M. E. Papke, Special Investigator for the Alcoholic Beverage Control, State of California, which is incorporated by reference and made part of this declaration as though fully set forth herein shows that as of this present date CONCHITA ESCOBAR is still the sole licensee for the VAMPIRE ROOM.

On June 27, 1969 after a stipulation was agreed to and signed by the parties to this action, which specifically included CONCHITA ESCOBAR, an order granting a permanent injunction was made by the HONORABLE CLAUDE M. OWENS, a Judge of the above-entitled court, which order, among other things,

enjoined Defendant CONCHITA ESCOBAR from allowing so-called "bottomless" performances, to-wit:

> It is hereby ordered that CONCHITA ESCOBAR, as well as all other managers and operators of the defendant establishment, are permanently enjoined and restrained from conducting or permitted to be conducted therein as part of the business operations the so-called bottomless performances, which more specifically, means any and all sexually provocative dances and exhibitions where the performer's genitalia, anus and pubic hair region, whether real or simulated, are not completely covered by material which cannot be seen through by the nearest spectator.

Defendant CONCHITA ESCOBAR was personally served with and had knowledge of the above-described June 27, 1966, order of permanent injunction.

As shown by the affidavit of M. E. Papke which is incorporated by reference, defendant CONCHITA ESCOBAR was the licensee of the business located at 4526 W. Westminister, Santa Ana and known as the VAMPIRE ROOM at all time relevant herein and more specifically on December 7, 1970 and December 8, 1970 had the ability to comply with the above described order of June 27, 1969.

On December 7, 1970 and December 8, 1970, adult females performed and exhibited themselves on a raised platform at the VAMPIRE ROOM and during each of said performances and exhibitions they displayed their genitalia, and pubic hair region, and on the December 8, 1970 occurrence the anal region was also clearly displayed, and on both occasions the above described areas were fully visible and viewed by the patrons

seated in the establishment, all as more fully described in the affidavits of N. Williams, M. Mitchell, James Davis and Greg Cooper, which are attached hereto, incorporated herein by reference and made a part of this declaration.

Subsequent to the granting of the above-described June 27, 1970 order for permanent injunction and after notice of said order, the Defendant CONCHITA ESCOBAR, the Defendant has, with full knowledge, willfully and deliberately failed to comply with said order of the court by permitting and authorizing the conduct above-described and more fully set forth in the attached affidavits of N. Williams, et al., to the place on the premises of the VAMPIRE ROOM on the dates of December 7, 1970 and December 8, 1970.

WHEREFORE, affiant prays for an order requiring that Defendant CONCHITA ESCOBAR, at a time to be named, to appear before this court and show cause, if any he have, why he should not be found guilty of contempt of the permanent injunction order set for above and punished accordingly.

DATED: December 18, 1970.

Respectfully submitted,

CECIL HICKS, DISTRICT
ATTORNEY COUNTY OF ORANGE.
STATE OF CALIFORNIA

By /s/ George W. McClure, Jr.
GEORGE W. McCLURE, JR.
Deputy District Attorney

AFFIDAVIT OF M. E. PAPKE

State of California, County of Orange, No. 16675.

M. E. PAPKE declares that he is presently employed as Supervising Special Investigator for the Alcoholic Beverage Control Board and presently works at the Santa Ana Office.

Affiant states that on December 17, 1970, he checked the records of the State of California and from a review of said records, has personal knowledge that Conchita Escobar as of that date is the only person whose name appears on the license for the sale of alcoholic beverages at 4526 Westminster, Santa Ana, California. That this is the only alcoholic beverage license for the retail sale of alcoholic beverages for this premises, and that it was issued June 21, 1968, to Conchita Escobar as on Sale beer license No. 48-87380.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 1970, in Santa Ana, California.

s/ M. E. Papke
M. E. PAPKE
Supervising Special Investigator

AFFIDAVIT OF N. WILLIAMS

State of California, County of Orange No. 166675

N. WILLIAMS declares that he is presently employed as an officer of the Santa Ana Police Department and incorporates by reference as though fully set forth herein as part of this affidavit, the attached arrest and crime report consisting of 2 pages, and declares under penalty of perjury that the facts and events therein contained were true and correct and were witnessed by him during the course of his above mentioned employment.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on Dec. 18, 1970, in Santa Ana, California.

/s/ N. E. Williams

AFFIDAVIT OF M. MITCHELL

State of California, County of Orange No. 166675

M. MITCHELL declares that he is presently employed as an officer of the Santa Ana Police Department and incorporates by reference as though fully set forth herein as part of this affidavit, the attached arrest and crime report consisting of 3 pages, and declares under penalty of perjury that the facts and events therein contained were true and correct and were witnessed

by him during the course of his above-mentioned employment.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 1970 in Santa Ana, California.

/s/ Michael Mitchell

AFFIDAVIT OF JAMES DAVIS

State of California, County of Orange. No. 166675.

JAMES DAVIS declares that he is presently employed as an officer of the Santa Ana Police Department and incorporates by reference as though fully set forth herein as part of this affidavit, the attached arrest and crime report consisting of 2 pages, and declares under penalty of perjury that the facts and events therein contained were true and correct and were witnessed by him during the course of his above-mentioned employment.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 1970 in Santa Ana, California.

/s /James D. Davis

AFFIDAVIT OF GREG COOPER

State of California, County of Orange, No. 166675.

Greg Cooper declares that he is presently employed as an officer of the Santa Ana Police Department and incorporates by reference as though fully set forth herein as part of this affidavit, the attached arrest and crime report consisting of 3 pages, and declares under penalty of perjury that the facts and events therein contained were true and correct and were witnessed by him during the course of his above-mentioned employment.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 1970 in Santa Ana, California.

Greg R. Cooper, #58

Santa Ana Police Department

Sect. 23.4 misc. vehicle VC 314.1 Indecent Exposure CASE NUMBER

VC 311.6 Bottomless Dancing VC [illegible]

[illegible] evidence; additional details not given above; license and describe any property obtained, including serial numbers.

LIST CASE NUMBERS OF ANY OTHER OFFENSES CLEARED OR CONNECTED WITH THIS REPORT. USE ADDITIONAL SHEET IF NECESSARY.

EVIDENCE: 1-pair turquoise blue and black bikini panties placed in locker #5.

At 5:10pm I entered the Vampire Room Beer Bar at 4526 West 17th. Upon entering I observed six male patrons seated around a raised platform extending from the north end of the bar area there was a female subject lying on the platform, another female subject standing by the cash register behind the actual bar and two male subjects playing pool. The bar area was lit by means of ceiling lights of different colors above the platform and beer bar. Officer Cooper entered the bar approximately three minutes after I entered. I stationed myself at the extreme south end of the platform and Officer Cooper seated himself two stools to my left on the west side of the platform. This elevated platform has a shelf on all sides allowing patrons who are seated there to place their beer glasses on the shelf. The female subject

4 REPORTED AND DATE	SIGNATURE OF REPORTING OFFICER	DATE AND TIME REPORT WRITTEN	MARKET VALUE
	40. Officer Davis #4	41. 12-6-70 8:30pm	42. NIL
ARRANT ISSUED?	SIGNATURE OF SUPERVISOR APPROVING	DATE AND TIME REPORT REVIEWED	STORED BY
	44.	45.	46.

who had orriginally been on the platform stepped down shortly after our entrance and was replaced by a female subject later identified as Dinne Smith. Immediately after climbing onto the platform she sat down and began conversing with the patrons seated nearby. She was wearing a long sleeved black blouse and the bikini panties listed above. A subject in the bar played the juke-box and Miss Smith walked briefly around on the platform. After the music stopped she began making jokes with the other two female subjects concerning recent arrests that had occurred in various bars throughout the city. She then turned her back to me, bent forward and pulled her bikini panties below her buttocks clearly exposing her anil opening and vagina. She then approached Officer Cooper and repeated the same act. A few minutes later she bent forward placing her hands on the floor extending her buttocks into the air and pulled her panties down exposing her anil opening and vagina again. She repeated this act on two more occasions to Officer Cooper and to another male patron.

At 5:35pm I exited the bar and summoned Officer Collins who placed Miss Smith under arrest for SAMC 12.4, she was subsequently transported to Orange County Jail. Officer Collins obtained the panties which she was still wearing when he made contact with her and turned them over to me.

ATTENTION RECORDS: CASE CLEARED BY ARREST

Officer Davis #4/skf

CPC 311.6 Obscene Conduct

Santa Ana Police Department

CPC 314.1 Indecent Exposure

SAMC 12-4 (a) Nude Dancing CPC 314.2 Aiding & Abetting Indecent Exposure

SAMC 12-4 (b) Aiding & Abetting Nude Dancing CPC 647a Lewd Conduct

SPECIFIC OFFENSE AND CODE SECTION

CASE NUMBER 622589.

DATE AND TIME OCCURRED	LOCATION OF OCCURRENCE	DIVISION	DATE AND TIME REPORTED TO DEPT.
1. 12-7-70 9:20 AM Monday	2. 4526 W. Westminster	3. Admin. Vice	4. 12-7-70 9:25??
VICTIM'S NAME (First Name if Business)	RESIDENCE ADDRESS (Business Address if Firm)	RESIDENCE PHONE	BUSINESS PHONE AND ADDRESS
5. State of Calif., People of	6. SAPD	7. ------	8. 834-4211
PERSON REPORTING OFFENSE	RESIDENCE ADDRESS	RESIDENCE PHONE	BUSINESS PHONE AND ADDRESS
9. Sergeant Williams #17	10. SAPD	11. ------	12. 834-4211
PERSON WHO DISCOVERED CRIME	RESIDENCE ADDRESS	RESIDENCE PHONE	BUSINESS PHONE AND ADDRESS
13. Same	14. Same	15. Same	16. Same
WITNESS(ES): NAME	RESIDENCE ADDRESS	RESIDENCE PHONE	BUSINESS PHONE AND ADDRESS
17. Sergeant Williams #17 Sergeant Mitchell #8	18. SAPD SAPD	19. ---- ----	20. 834-4211 834-4211

VICTIM'S OCCUPATION	Race	Sex	Age	TYPE OF PREMISES OR LOCATION WHERE OFFENSE WAS COMMITTED
21. -----	22. ----			23. One story stucco bar, open to public

CRIMES AGAINST PROPERTY

POINT WHERE ENTRANCE WAS MADE:

24.

EXACT LOCATION OF PROPERTY WHEN STOLEN

26.

INSTRUMENTS USED (Describe)

28.

METHOD USED TO GAIN ENTRANCE

30.

WHERE WERE OCCUPANTS AT TIME OF OFFENSE?

32.

APPARENT MOTIVE—TYPE OF PROPERTY TAKEN OR OBTAINED

34.

TRADEMARK OF SUSPECT(S)—ACTIONS OR CONVERSATION

35. Dances and exposes private parts.

VEHICLE USED BY SUSPECT(S)—YEAR, MAKE, BODY TYPE, COLOR, LICENSE NUMBER AND ANY OTHER IDENTIFYING MARKS

36. None

CRIMES AGAINST THE PERSON

WEAPON—FORCE OR MEANS USED:

25.

EXACT LOCATION OF VICTIM AT TIME OF OFFENSE

27.

VICTIM'S ACTIVITY AT TIME OF OFFENSE

29.

EXACT WORDS USED BY SUSPECT

31.

33.

ARRESTEES: NAME — ADDRESS USED — CHARGES — RACE — SEX — HEIGHT — WEIGHT — AGE — IDENT. NO.'s (if any)

37.

No. 1 Monette (NMN) McCall, 1600 W. Broadway #10B, Anaheim Plat. — CPC 314.1 CPC 647a CPC 311.6 and SAMC 12-4(a) — Brn/Brn — 5-6 — 135 — (23) — DOB: 7-25-47 — F/C F09-657

AKA: Coffee

No. 2 Conchita (N) Escobar, 7250 Franklin Ave., L.A. — CPC 314.2 SAMC 12-4(b) — Brn/Brn — 5-1 — 125 — (39) — DOB: 12-18-30 — F/Spa: F09-658

No. 3

DETAILS: Describe evidence; summarize details not given above; itemize and describe any property obtained, including serial numbers.

38. LIST CASE NUMBERS OF ANY OTHER OFFENSES CLEARED OR CONNECTED WITH THIS REPORT. USE ADDITIONAL SHEET IF NECESSARY.

EVIDENCE:

One dark pink G string, placed in evidence locker number five (5).

Sergeant Mitchell and I entered the VAMPIRE ROOM BAR, 4526, West Westminster, Santa Ana, ABC license type 40 number: 57380.

As we entered we observed the arrestee, MONETTE McCALL, on the runway. The runway protrudes from a raised stage on the north end of the bar

APB NUMBER AND DATE	SIGNATURE OF REPORTING OFFICER	DATE AND TIME REPORT WRITTEN	MARKET VALUE
39.	40. Sgt. Williams	41. 12-8-70	42. NIL
WARRANT ISSUED?	SIGNATURE OF SUPERVISOR APPROVING	DATE AND TIME REPORT REVIEWED	TYPED BY
43.	44.	45.	46. ES

RDPD 20

and runs from that stage approximately 20 feet towards the south end of the bar. It is about 4 feet wide and 3 feet high. This stage is covered with a red carpet and above it, are ultraviolet and red fluorescence lights. The north wall of the bar, behind the runway and stage, is covered with mirrors so that a person on the stage or runway may be observed in the mirror as well as directly while they perform. Around the runway there were approximately 19 chairs pulled up to a small shelf of approximately 8 inches wide, which runs around the exterior of the runway. Most of these chairs were occupied at the time we entered and I sat in one, on the west side of the runway.

I observed MISS ESCOBAR behind the bar dispensing beer and operating the cash register.

MISS McCALL was lying on the carpet and I noted that she had manipulated her G string in such a manner that it was pulled inside both the labia majora and the labia minora. Her pubic area was clearly visible and appeared to have been shaved. As she lie on the runway, music was playing, however she did not appear to be moving in time with the music, nor paying any particular attention to it.

As I observed, she took a position so that her legs were pointed in my direction and she then began to knead her breasts with her hands, inverting the nipples with her index finger, etc.

She then lied back on the carpeting and spread her legs and reached down with her hands and pulled her vulva open. I was able to clearly see anal aperture as well as the vaginal opening clitoris etc.

She then moved across the stage and appeared to repeat the same motion in front of other customers.

At this time I was approached by a barmaid, who was not identified, and purchased a bottle of beer for 95¢ cents.

MISS McCALL continued to move about the stage from customer to customer to repeat the performance, as she did in front of me. At no time did she appear to pay any attention to the music until it came to a complete stop and then she would remain in front of the customer that she was adjacent to at that time and talk with him while another bar employee obtained money from MISS ESCOBAR and placed it in the juke box.

MISS McCALL then stood up and danced to one record and at the close of it, bent over, with her back towards me, reached back and spread her buttocks and with the middle finger of her right hand, pushed her G string

into her anal aperture, she then pulled it out and again laid down on the stage and began moving as she had before. During this time she pulled her G string away from her body, completely revealing her pubic area, and I noticed that MISS ESCOBAR was behind the bar at this time and appeared to be looking directly at MISS McCALL, as she continued her performance.

At this time a signal was given to Officers Sterner and Holton, who were outside, and they entered and made the arrests of both MISS McCALL and MISS ESCOBAR.

The above evidence was collected by Officer Holton and placed in locker five (5).

ATTENTION RECORDS: CASE CLEARED BY ARREST

Sergeant Williams/ss

Court of Appeal—State of California, Fourth Appellate Division, Division Two:

Conchita Escobar vs. Superior Court etc., County of Orange, et al. 4 Civ. No. 11667. (Orange County #166675).

Filed: August 17, 1971.

BY THE COURT:

The Petition for Writ of Habeas Corpus and/or Writ of Certiorari is DENIED.

Dated August 17, 1971.

Gabbert J., *Acting P.J.*

Copy to:

County Clerk County of Orange, Courthouse, Santa Ana, 92701

Attny. Genl., San Diego, 92101

Distr. Attny., Courthouse, Santa Ana, 92701

James A. Musick, Sheriff, 550 N. Flower, Santa Ana, 92701

Berrien E. Moore, 1515 Redondo Beach Blvd., Gardena, 90247

APPENDIX D.

CLERK'S OFFICE SUPREME COURT
4250 State Building
San Francisco, California 94102. Sept. 22, 1971.

Dear Sir: *I have this day filed Order*

HEARING DENIED.

In re: 4 Civ. *No.* 11667

Escobar vs. Superior Court, Orange County

Respectfully,

G. E. Bishel, *Clerk.*